

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CASE NO. 8:11CR401
)
 Plaintiff,)
) O R D E R
 v.)
)
 AGAPITO AGUILAR-SOSTENES,)
)
 Defendant.)

This matter is before the court following the court's hearing on May 10, 2013 on the defendant's original Motion to Determine Competency (Filing no. 45). First Assistant Federal Public Defender Shannon P. O'Connor represented Aguilar-Sostenes and Assistant U.S. Attorney Meredith Tyrakoski represented the United States. The court took judicial notice of the Forensic Evaluation conducted by the Bureau of Prisons on March 20, 2013. Neither party offered additional evidence.

Background

On December 14, 2011, the defendant was indicted for possession with intent to deliver methamphetamine. On March 19, 2012, the defendant filed a motion to determine competency. (See Filing no. 45) The Court held an evidentiary hearing on the motion on March 22, 2012. Aguilar's counsel provided to the court a psychological evaluation which concluded that the defendant was suffering from a mental disease which currently rendered him incompetent to stand trial. (See Exhibit at filing no. 48) Defense counsel offered the evaluation as evidence without objection by the government. No additional evidence was offered.

The Court found "by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent

he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." (See the court's order at Filing no. 49) The court committed "the defendant to the custody of the Attorney General to hospitalize the defendant pursuant to 18 U.S.C. § 4241 for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is substantial probability that in the foreseeable future he will attain the capacity to permit these proceedings to go forward."

Id.

On April 5, 2013, Craig Apker, Complex Warden at Federal Correctional Complex Butner, informed the court of the results of the defendant's Forensic Evaluation conducted on April 5, 2013. (See Filing no. 71 – Forensic Evaluation) Warden Apker noted "that the defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent he is unable to understand the nature and consequences of the proceedings filed against him or to assist properly in his own defense nor is there a substantial probability that his competency will be restored in the foreseeable future."

Analysis

Under 18 U.S.C. § 4241, "[i]f, at the end of the time period specified it is determined that the defendant's mental condition has not so improved as to permit proceedings to go forward, the defendant is subject to the provisions of § 4246." The court finds that there is not a substantial probability that the defendant will attain the capacity to permit these proceedings to go forward in the foreseeable future. Under 18 U.S.C. § 4246(b), this court may order an examination of the defendant pursuant to 18 U.S.C. § 4247(b) and (c) to determine whether the defendant "is suffering from a mental disease or defect as a result

of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another[.] Therefore, pursuant to 18 U.S.C. § 4246(b):

IT IS ORDERED that the defendant be committed to the custody of the Attorney General who shall place the defendant in a suitable facility for such a reasonable period of time not to exceed 45 days, as is necessary to determine whether the defendant is suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another.

DATED this 4th day of June, 2013.

BY THE COURT:

s/ Joseph F. Bataillon
The Honorable Joseph F. Bataillon
United States District Judge